



December 21, 1999

Mr. Robert L. Kane  
The University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2902

OR99-3713

Dear Mr. Kane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130629.

The University of Texas System (the “system”) received a request for “copies of select responses to the ‘Request for Proposal (RFP) for Self-Funded or Fully Insured HMO for the Employees and Retirees of The University of Texas System to be effective September 1, 1999.’” You state that the UTMB Healthcare Systems has agreed to allow its responses to be released. You claim, however, that Prudential Healthcare (“Prudential”) has objected to the release of portions of its proposal information. You raise no exception to disclosure on behalf of the system, and make no arguments regarding the proprietary nature of Prudential’s information.

Pursuant to section 552.305 of the Government Code, you notified Prudential of the request for information. *See* Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). Prudential responded to the notice by stating that the release of Section III, pages 22-33, and page 59 of its proposal would cause the company substantial competitive harm.

Section 552.110 protects the property interests of private parties by excepting from

disclosure commercial or financial information for which it is demonstrated based on *specific factual evidence* that disclosure would cause substantial competitive harm to the person from whom the information was obtained. After careful review, we conclude that Prudential has made only unsubstantiated, conclusory statements regarding the confidentiality of its proposal information. *See also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Consequently, the submitted information is not protected by section 552.110(b), and must, therefore, be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

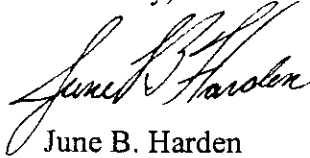
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being more prominent.

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ljp

Ref: ID# 130629

Encl. Submitted documents

cc: Mr. Erin Tobin  
Legal Assistant  
Akin, Gump, Strauss, Hauer & Feld  
1900 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701  
(w/o enclosures)

Mr. Jim Zelenka, FLMI, ACS  
Account Manager  
Prudential HealthCare  
3 Greenway Plaza  
Houston, Texas 77046  
(w/o enclosures)